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4. Appeal and Error (§ 1053 (3)*)—Harmless Error—Admission of Evidence.—In a personal injury suit, evidence of ice on a trestle improperly admitted because not alleged in declaration, and not stricken out on motion, held cured by an instruction that, if ice was proximate cause of injury, there was no liability.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4180-4182; Dec. Dig. § 1053 (3); Trial, Cent. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 619.]

Error to Circuit Court of City of Danville.

Action by J. D. Lopford against the City of Danville. From a judgment for plaintiff, defendant brings error. Affirmed.

E. Walton Brown, of Danville, for plaintiff in error.

B. H. Custer, of Danville, for defendant in error.

KLAFF *v.* VIRGINIA RY. & POWER CO.

Jan. 11, 1917.

[91 S. E. 173.]

Pleading (§ 11*)—Setting out Evidence.—It is enough for the declaration in an action for malicious prosecution, showing the plaintiff was acquitted, to allege want of probable cause, without setting out the evidence thereof; such allegation not being the assertion of a conclusion of law, but of an ultimate fact, that is, one in issue.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 31; Dec. Dig. § 11.* 9 Va.-W. Va. Enc. Dig. 505.]

Appeal from Law and Chancery Court of City of Norfolk.

Action by Isaac Klaff against the Virginia Railway & Power Company. From a judgment of dismissal, plaintiff appeals. Reversed and remanded.

Rumble & Campe, of Norfolk, for plaintiff in error.

R. E. Miller and *W. H. Venable*, both of Norfolk, and *H. W. Anderson*, of Richmond, for defendant in error.

LEWIS *v.* COMMONWEALTH.

Jan. 16, 1917.

[91 S. E. 174.]

False Pretenses (§ 38*)—Indictment—Variance.—The charged offense of larceny of money by false pretenses defined by Code 1904, § 3722, was substantially proven by evidence that the money was

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

fraudulently obtained through a check acquired by respondent's false statements as to the death of the person insured, which check he had cashed.

[Ed. Note.—For other cases, see False Pretenses, Cent. Dig. §§ 50-53; Dec. Dig. § 38.* 5 Va.-W. Va. Enc. Dig. 825.]

Error to Hustings Court of Richmond.

J. A. Lewis was convicted of larceny of money, and brings error. Affirmed.

L. O. Wendenburg, of Richmond, for plaintiff in error.

The Attorney General, for the Commonwealth.

STEIN et al. v. MORRIS et al.

Jan. 11, 1917.

[91 S. E. 177.]

1. Trade-Marks and Trade-Names (§ 70 (1*))—Unfair Competition—Morris Plan of Industrial Banking.—The "Morris plan of industrial banking" is not an infringement of the mutual installment plan of industrial savings and loan banking, known as "Merchants' & Mechanics' Savings Association," since the first plan is operated on fixed capital and the borrowers and savers do not participate in the profits and losses.

[Ed. Note.—For other cases, see Trade-Marks and Trade-Names, Cent. Dig. § 81; Dec. Dig. § 70 (1).* 11 Va.-W. Va. Enc. Dig. 902.]

2. Property (§ 2*)—Subjects of Property Rights.—If an individual originates a scheme or idea of banking, he could not have a property right in such method or idea without any physical means or devices for carrying it out.

[Ed. Note.—For other cases, see Property, Cent. Dig. § 2; Dec. Dig. § 2.* 11 Va.-W. Va. Enc. Dig. 415.]

3. Attorney and Client (§ 106*)—Violation of Confidence—Evidence—Sufficiency.—Where the complainant, who claimed to have originated a scheme of banking, approached an attorney, one of the defendants, asking him to organize a similar association in another city, and the two entered upon the organization, but it resulted in failure, the essence of the proposition requiring that the attorney discuss the plan and make it known to the public, there was no violation of the client's confidence when the attorney subsequently evolved a prima facie similar but essentially different scheme.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. §§ 217, 219; Dec. Dig. § 106.* 2 Va.-W. Va. Enc. Dig. 160.]

4. Witnesses (§ 205*)—Violation of Confidence—Attorney and Client.—No communication to a lawyer for the express purpose of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.